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No. 288

In The

Supreme Court of the United States

Appellate Docket

October Term, 1963

FRED DUNLAP and JAMES BARBOUR,
Appellants,

vs.

THE STATE OF OHIO,
Appellee.

BRIEF OF APPELLANTS OPPOSING APPELLEE'S MOTION TO DISMISS APPEAL

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Appellee's motion to dismiss is predicated primarily on the grounds best stated by Appellee, on Page 13 of their brief, in which Appellee states "that nowhere in the Constitution of the State of Ohio or the Constitution of the United States, can there be found any property right guarantee to purchase, obtain, possess and/or use narcotic drugs." In so stating, Appellee has side-stepped the main issue of this Appeal which restated is as follows: Whether or not Section 3719.16 of the Ohio Revised Code, which falls under the Ohio Narcotic Control Act, is stated in language that only trained persons can understand, and thereby become void for vagueness as to ordinary persons without special training.

A common example of technical vagueness may be simply illustrated by the following example: A father sees a beautifully-assembled bicycle on display in a savings stamp redemption store window. After saving sufficient stamps and ordering same, he finds much to his dismay, it is delivered in a box containing multiple screws, nuts, handlebars, and all sorts of pieces that are supposed to fit together to make a bicycle. Inside the box, also, he finds a very concise, technical brochure detailing the steps to assemble the bicycle. There is no question that a person with mechanical training can and does understand the technical language of the brochure. However, the ordinary citizen without such training has to consult a neighbor, a bicycle repair shop or other persons generally to assemble his son's bicycle. *Simply, concise, technical language becomes vague by reason of lack of understanding or technical training.*

Appellants contend that it is cruel and inhuman to impose a penalty on a citizen who violates a law such citizen cannot, by reason of ordinary training, understand. Such prohibition may as well be written in Latin. It therefore becomes obvious that a constitutional question is raised under the 14th Amendment in this case. Liberty is a property right and must be zealously guarded.

Prohibitions under Police Power must be scrutinized for clarity where punishment is involved. Section 3719.16 of the Ohio Revised Code does violate the provisions of the 14th Amendment to the Constitution of the United States. While a state may regulate the manner in which narcotics are used (*Whipple* v. *Martinson*, 256 US 41) the state can not destroy the right to use them. *Robinson* v. *California*, 370 US 660.

Appellee, in their brief, contends that the state has the power to destroy the right to use them and avoids the issue of method of regulation.

The Court's attention is hereby called to the case of *Arceneaux* v. *Louisiana*, No. 76, Appellate Docket (in forma pauperis) involving the same issue of void for vagueness. Appellants respectfully adopt the contentions of the brief on the merits of the Appellant-Arceneaux in support of their contention that the statute under which they were convicted is likewise void for vagueness.

For the foregoing reasons, the Appellants ask this Honorable Court to overrule the Motion to Dismiss the Appeal, and to note Probable Jurisdiction.

All of which is repectfully submitted by,

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